

1988

# Terri C. Hardy, widow of Bryce W. Hardy v. Beneficial Life Insurance Company : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

Defendant/Appellant

Argument Priority  
Classification 14b

APPELLANT'S REPLY BRIEF

Appeal from Judgment of the  
Third Judicial District Court for Salt Lake County  
Honorable Richard H. Moffat

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May 1964  
Carmichael, Calif.  
Utah County, Utah

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IN THE UTAH COURT OF APPEALS

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TERRI C. HARDY, widow of	)	
BRYCE W. HARDY, deceased,	)	
	)	
Plaintiff/Respondent	)	
vs.	)	No. 880464-CA
	)	
BENEFICIAL LIFE INSURANCE	)	Argument Priority
COMPANY, a Utah corporation,	)	Classification 14b
	)	
Defendant/Appellant	)	
	)	

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APPELLANT'S REPLY BRIEF

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Appeal from Judgment of the  
Third Judicial District Court for Salt Lake County  
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TABLE OF CONTENTS

SUMMARY OF ARGUMENT . . . . . 1

ARGUMENT

    I. Bryce Hardy's Death From An  
        Overdose of Narcotics Was  
        Not An Accident . . . . . 1

CONCLUSION . . . . . 4

TABLE OF AUTHORITIES

CASES CITED

<u>Hoffman v. Life Insurance Company of North America,</u> 669 P. 2d 410 (Utah 1983) . . . . .	2
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## SUMMARY OF ARGUMENT

Under Utah insurance law, death is not accidental if it was the natural and probable consequence of an act or course of action undertaken by the insured. The natural and probable consequence of an act or course of action is the result which, from the insured's point of view, may reasonably be expected. The evidence in this case clearly shows that Mr. Hardy expected to die as a result of his act and course of action. His death resulting from his act and course was action was expected by him and was not accidental.

## ARGUMENT

### I. Bryce Hardy's Death from an Overdose of Narcotics was not an Accident

Mrs. Hardy's brief characterizes Beneficial's denial of benefits in this case as being based upon an "unstated premise that anyone who engages in illegal drug usage has to be deemed to have intended to die by virtue of that conduct", or being predicated "upon the false premise that Bryce Hardy somehow died as a result of a pattern of drug abuse" or being based on the ground that Mr. Hardy's conduct "was so reckless that it deprived his death of an accidental character". These characterizations of Beneficial's position are simply not accurate. Beneficial's argument, pure and

simple, is that Mr. Hardy's death was not an accident under Utah law.

The Utah Supreme Court has held that "where the insured expected or anticipated that death would follow from his or her conduct, recovery has been denied" and that "An effect which is the natural and probable consequence of an act or course of action is not an accident." Hoffman v. Life Insurance Co. of North America, 669 P.2d 410, 417 and 415 (Utah 1983). In order to determine whether an effect is the natural and probable consequence of an act or course of action, one must know what that act or course of action was. It must also be determined what the decedent expected to result therefrom.

Mr. Hardy's conduct consisted of a continuous series of narcotic ingestion episodes. Beneficial's reference to this conduct is directed to the question of what Mr. Hardy's act or course of action was and to what he expected or anticipated would follow from such acts. It is true, as Mrs. Hardy states, that Mr. Hardy's death was the result of one overdose of drugs. The question, however, is whether Mr. Hardy expected to die from such an overdose of drugs. The evidence clearly shows that he did. The facts are that Mr. Hardy's physicians and counselors didn't give him "good advice" as argued by Mrs. Hardy. They gave him specific instruction that if he continued to ingest drugs he would kill himself. Mr. Hardy understood this and expected that that result would follow if he continued to ingest drugs. He had, on at least two prior occasions, taken overdoses of drugs and nearly died. One

of these occasions was just five months before his death. When hospitalized following that occasion he expressed to his nurse that if he didn't stop his act or course of action he would "be dead". Mr. Hardy expected to die from exactly what killed him, an overdose of drugs.

None of the cases cited by Mrs. Hardy have facts similar to those in this case. None present the situation of a person who had almost died on previous occasions from taking overdoses of drugs or who a few months before his death expressed his specific understanding that if he continued his course of action he expected that he would "be dead". Mr. Hardy clearly expected and anticipated that if he kept abusing drugs he would die from an episode of drug abuse. He kept abusing drugs and he died from an episode of drug abuse.

Mrs. Hardy also argues that Beneficial was free to incorporate a provision into its policy excluding death from drugs from coverage and that the Court should not write such an exclusion into the policy. Mrs. Hardy misses the point. Beneficial is not arguing that all drug related deaths are non-accidental. In many cases death from a drug overdose would clearly be accidental. In this case, however, the facts prove that Mr. Hardy expected and anticipated that his death would follow from his conduct.



CONCLUSION

Mr. Hardy's death was the natural and probable consequence of his own actions. He expected and anticipated those actions would result in his death. Mr. Hardy's death was not an accident.

DATED this 21<sup>st</sup> day of November, 1988.

ROMNEY & CONDIE


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CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 21st day of November, 1988, I caused to be mailed in the United States Mail at Salt Lake City, Utah, first class, postage prepaid, four true and correct copies of the foregoing Appellant's Reply Brief addressed to the following:

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